COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 01-34

REQUEST: Department of Telecommunications and Energy Requests to AT&T Communications of New England, Inc.

DATE: April 25, 2002

DTE-ATT 1-1: Assuming that it is possible to order a dedicated circuit from a CAP at a hypothetical location, does it take longer to provision this circuit from a CAP or from Verizon? If the answer depends on the type of circuit and/or whether facilities exist, be sure to specify this in your answer. In addition, please provide any supporting documentation to support your answer.

Respondent: E. Halloran

RESPONSE: CLECs have agreed to provide AT&T the following standard intervals for special access circuits in a building in which the CLEC has a physical presence:

<__Begin Proprietary__

?? XXXXX XXXX XXXXXXXX XXXXX
?? XXXXXXXXX XXXXXXX XXXX XXXXXX

__End Proprietary__>

When circuits must be built to meet an order, the time required for the CLEC to provision the circuit differs on a case-by-case basis.

Verizon states in its Corrected Panel Testimony in footnote 17 (page 27) that the minimum provisioning intervals in its tariff are:

?? 9 business days for eight or less DS1 circuits
?? 20 business days for four or less DS3 circuits

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DTE-ATT 1-2: Please refer to page 21 of ATT's April 3rd Surrebuttal testimony. Provide supporting documentation for the statement "If Verizon wished to be classified as non-dominant...Verizon would need to make the more difficult showing that it lacks any relevant market power with respect to those services."

Respondent: E. Halloran in Reliance on Counsel

RESPONSE: For this response, I relied on AT&T counsel's knowledge of relevant Department and FCC authority.

Below I provide a list of Department and FCC orders, as well as a brief summary or quotation from the Department or FCC order relevant to the above question.

Department Orders:

A. ***Petition of the Attorney General for a Generic Adjudicatory Proceeding Concerning Intrastate Competition by Common Carriers in the Transmission of Intelligence by Electricity, Specifically with Respect to Intra-LATA Competition, and Related Issues*, D.P.U. 1731 (1985) ("*IntraLATA Competition Order*") [TAB A]**

Under the framework set forth in the Department's *IntraLATA Competition Order*, the degree of regulation depends on whether a carrier is "dominant" or "nondominant" in its respective markets. *IntraLATA Competition Order*, at 61. The Department established criteria for deciding when, and in what circumstances, it would be appropriate to reduce its traditional regulatory oversight of Verizon's services and pricing. The Department determined that: "The degree of regulation that should apply to a particular market should reflect the degree of competition present." *Id.* at 45. The rationale for tying any reduction in the degree of regulation of a traditional monopoly carrier to the degree to which competition has developed for that carrier's services was based on the Department's recognition that "a danger exists if the Department moves to reduce the degree of regulation before sufficient competitive forces are present in a market." *Id.* at 55. The Department further stated:

> As competition is introduced into a market . . . it is extremely important that the reduction in regulatory oversight occur only after sufficient market forces are in place to ensure that carriers do not have an ability to raise prices to inefficient levels. Therefore, the degree of regulation of a particular carrier must focus upon the degree of market power exhibited by that carrier.

Id. at 56. The Department therefore recognized the benefits of maintaining a high degree of control over the pricing of carriers with market power. It stated that:

> By maintaining a higher degree of regulatory control over those carriers that exhibit market power, we are better assured that economic efficiency and fairness will occur in the rates of all carriers.

Id. at 67. In recognizing the importance of constraining market power wherever competition is insufficiently developed, the Department stated:

> One of the purposes of regulation is to ensure that suppliers in regulated markets do not raise prices to extract monopoly profits or engage in predatory pricing to eliminate competition . . . Under regulation, market power is not as great a concern to the Department, since regulation takes the place of marketplace forces and limits the ability of a carrier to engage in such predatory pricing and cross subsidization practices.

Id. at 55-56.

B. ***AT&T Communications of New England, Inc.,* D.P.U. 90-133 (1991) ("D.P.U. 90-133") [TAB B]**

The Department denied AT&T's petition to be reclassified as a "nondominant" telecommunications carrier in Massachusetts.

Investigating the market dominance of AT&T, the Department considered (1) AT&T's market share; (2) impediments to competition; and (3) the presence of competition. D.P.U. 90-133, at 37. The Department recognized that "a firm with market power has the ability to set the prices for the market and, within a reasonable range, is not susceptible to a significant loss of its market share because of the long-term pricing practices of its competitors." *Id*.

C. ***Order Reclassifying AT&T as a Nondominant Carrier in the Massachusetts InterLATA and IntraLATA Telecommunications Market*****, D.P.U. 95-131 (November 13, 1996) [TAB C]**

The Department considered the following factors in reclassifying AT&T as nondominant: increased competition in markets; high levels of supply and demand elasticity resulting in a decline in AT&T's market share; AT&T's reduction of rates to remain competitive.

<u>FCC Orders/Federal Case</u>:

D./E. ***Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers; Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA*****, FCC 99-206, Fifth Report and Order, 14 FCC Rcd 14221 (1999)** ***("Pricing Flexibility Order"),*** **aff'd sub nom.** ***WorldCom, Inc. v. FCC,*** **238 F.3d 449 (D.C. Cir. 2001) [TABS D and E]**.

In its *Pricing Flexibility Order*, the FCC expressly declined to find the provision of loops and transport sufficiently competitive to consider the ILEC non-dominant in the provision of special access services. The FCC stated: "Phase II relief is not tantamount to non-dominant treatment." *Pricing Flexibility Order*, ¶ *151, n. 372*.

The Circuit Court for the District of Columbia expressly relied upon that finding in affirming the FCC's order. *See WorldCom, 238 F.3d at 460* ("the FCC did not engage in the thorough competition analysis" that would be expected in "non-dominance proceedings"). Rather, the FCC decided that it would use a rote, mechanical test, not to determine market power, but only to identify emerging – but not yet established – competition, and allow ILECs the flexibility to respond to it.

F. ***Special Access Notice of Proposed Rulemaking*, FCC 01-339, at ¶14 and n.38 (November 19, 2001) (citing *Pricing Flexibility Order*, at ¶¶ 3 and 151) [TAB F]**

"In the *Pricing Flexibility Order*, the Commission permitted incumbents special access pricing flexibility upon satisfying certain competitive thresholds; at the same time, it did not go so far as to find that incumbents do not have market power with respect to these services."

"We…note that the *Pricing Flexibility Order* does not grant incumbent LECs all the regulatory relief afforded to non-dominant carriers, that relief is limited to certain services and certain areas, and that incumbent LECs are still required to file generally available tariffs."

Finally, it should be noted that Verizon has never petitioned the Department for a designation of nondominance in the provision of special access circuits.

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DTE-ATT 1-3: Are the facilities referred to on page 9 of the testimony of Fea submitted in D.T.E. 01-31 exclusively special access circuits?

Respondent: E. Halloran

RESPONSE: The Type II or "off-net" percentages provided in Anthony Fea's testimony are percentages of dedicated circuits ordered from various providers, primarily Verizon. AT&T does not keep records to confirm under what tariff the circuits were ordered. However, because of the UNE use restrictions in Massachusetts, I believe that all or nearly all of the circuits contained in the percentages were ordered under the special access tariffs.

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DTE-ATT 1-4: Please refer to page 13, lines 10-15 of AT&T's February 6th, 2002, testimony and VZ-ATT 2-5. Provide documentation to support the following statements:

1. "on-time provisioning performance for AT&T in Verizon North is worse than the performance for AT&T in any other part of Verizon",

2. "worse than the performance for AT&T by any other ILEC," and

3. "Verizon North charges AT&T the highest price in the country for DS1 special access circuits."

Respondent: E. Halloran

RESPONSE: Attachment A illustrates the on-time performance and completion intervals of Verizon-North versus Verizon-South, Verizon-West and other ILECs. The data on which Attachment A is based comes from AT&T internal databases.

Attachment B-1 provides the prices for special access circuits as of April 30, 2002, that AT&T pays Verizon-North, Verizon-South and other ILECs. Verizon-North's average composite rate includes all applicable discounts. Where noted, prices shown for other ILECs do not include all applicable discounts. Even so, Verizon-North's prices are the highest of all ILEC prices for special access circuits.

Attachment B-2 provides a summary of the 2000 and 2001 prices for special access circuits that AT&T paid Verizon-North, Verizon South and other ILECs.

All attachments to this response are proprietary and are only being provided to the Department and to Verizon pursuant to AT&T's protective agreement with Verizon in this docket.

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DTE-ATT 1-5: Please provide the "ILEC self reporting performance data" referred to in AT&T's response to VZ-ATT 2-5.

Respondent: E. Halloran

RESPONSE: I understand that AT&T's practice is not to disclose in a regulatory proceeding the data self-reported by ILECs to AT&T. If Verizon will waive any claims to confidentiality of the Verizon self-reported data, AT&T will provide the Verizon data to the Department.

Attachment A to DTE-ATT 1-4 provides data collected by AT&T (as opposed to Verizon) which demonstrates that the special access DS1 on-time provisioning performance and completion intervals for AT&T in Verizon-North are worse than the performance for AT&T in any part of Verizon and worse than the performance for AT&T by any other ILEC.

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DTE-ATT 1-6: Refer to Direct Testimony of Halloran, at page 9, lines 10-11. Ms. Halloran states "Indeed, in July 2001, it was 99% for Verizon's retail customers and 75 % for wholesale customers." What measures do these percentages refer to?

Respondent: E. Halloran

RESPONSE: On-time performance ("OTP").

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DTE-ATT 1-7: Refer to Direct Testimony of Halloran, page 13. Ms. Halloran states, "Verizon North charges AT&T the highest price in the country for DS1 special access circuits." Please provide proof of this statement.

Respondent: E. Halloran

RESPONSE: Attachments B-1 and B-2 to DTE-ATT 1-4 show that the prices AT&T pays for special access circuits from Verizon-North are higher than the prices AT&T pays for special access circuits from Verizon-South and other ILECs. Verizon-North prices include all applicable discounts. Where noted in the attachments, prices shown for other ILECs do not include all applicable discounts. Even so, Verizon-North's prices are the highest of all ILEC prices for special access circuits.

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DTE-ATT 1-8: Please provide the press releases referred to on page 22 of the Direct Testimony of Eileen Halloran.

Respondent: E. Halloran

RESPONSE: Please see the attached press release entitled "Verizon tightens purse strings" which addresses Verizon's recent reductions of its investments in infrastructure.

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DTE-ATT 1-9: Refer to Direct Testimony of Halloran, at page 7, lines 4-6. Ms. Halloran states the following about Verizon's special access performance: "the dramatic decline experienced over the last several years is wholly inconsistent with the performance one would reasonably expect in a competitive market." Please provide data that shows this dramatic decline over the last several years.

Respondent: E. Halloran

RESPONSE: My statement is based on my memory of the regular reports produced by AT&T internal data and ILEC self-reported data over the last several years. See Attachment A to DTE-ATT 1-4 for Verizon's poor on-time performance and completion intervals for January – March 2002. The historical AT&T internal data has not been saved in an easily accessible form. AT&T will attempt to retrieve the data if the Department wishes.

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DTE-ATT 1-10: Refer to VZ-ATT-2-1, where AT&T identifies the current percentage of its special access lines that are served by its own facilities (i.e., on-net), and the percent of AT&T's special access lines are served using facilities owned by Verizon. Please provide a forecast for "off-net" facilities within the 2003-2008 time period, if one is available.

Respondent: E. Halloran

RESPONSE: AT&T does not forecast Type II or off-net facilities. AT&T does however commit to Verizon-North to certain volumes of Special Access DS1 and DS3 circuits for each month over a period of years. Thus, AT&T not only forecasts but commits to have in use for each month a certain number of Verizon-provisioned circuits. In return, AT&T receives a discounted tariff rate. If AT&T does not meet its volume commitment to Verizon based on a monthly average over a period of time, AT&T will incur a penalty for the shortfall volumes.

Attached are the figures representing AT&T's commitment to Verizon-North for DS1 and DS3 circuits. These figures are proprietary and are only being provided to the Department and to Verizon pursuant to AT&T's protective agreement with Verizon in this docket.

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DTE-ATT 1-11: Refer to the April 3, 2002 Surrebuttal Testimony of Halloran, page 23. Provide a price comparison of the prices that AT&T pays for special access services.

Respondent: E. Halloran

RESPONSE: Attachments B-1 and B-2 to DTE-ATT 1-4 provide the prices AT&T pays for special access circuits from Verizon-North, Verizon-South and other ILECs. Verizon-North prices include all applicable discounts. Where noted in the attachments, prices shown for the other ILECs do not include all applicable discounts. Even so, Verizon North's prices are the highest of all ILEC prices for special access circuits.

The prices AT&T pays for special access circuits ordered from CLECs are based on percent discounts from Verizon's tariff rates after the discount provided by Verizon-North has been already taken. In other words, the CLEC discounts are in addition to the discount that AT&T receives from Verizon.